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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,681	11/30/2001	Richard Wayne Cheston	RPS9 2001 0106	7371
45211	7590	09/15/2005	EXAMINER	
KELLY K. KORDZIK WINSTEAD SECHREST & MINICK PC PO BOX 50784 DALLAS, TX 75201			PICH, PONNOREAY	
			ART UNIT	PAPER NUMBER
			2135	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/998,681	CHESTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ponnoreay Pich	2135	

All participants (applicant, applicant's representative, PTO personnel):

(1) Ponnoreay Pich. (3)\_\_\_\_\_.

(2) G. Goel (#1535). (4)\_\_\_\_\_.

Date of Interview: 07 September 2005.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 1-54.

Identification of prior art discussed: Stevelim and Lovelace.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Ponnoreay Pich  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: First, the examiner pointed out that the first point in the topics of discussion Mr. Goel had sent in had an incorrect indication that the examiner had made a 112 rejection. There were objections to the abstract and specification, not 112 rejections. Next, we discussed why Stevelim and Lovelace were analogous art if Lovelace did not mention "boot of multiple operating systems". The examiner directed Mr. Goel to col 3, lines 40-46 of Lovelace wherein it was discussed Windows NT and Windows NT 4, which the examiner believed read on multiple operating systems. The examiner also stated that one of the components used to boot Windows NT is the boot.ini file, which is used to build a list of bootable operating systems, so in light of that also, Lovelace read on multiple operating systems, since the boot.ini file is an inherent component of the Windows NT boot process. Mr. Goel still disagreed that Lovelace is directed towards multiple operating systems and stated that it was used to just boot "an" operating system. The examiner then explained to Mr. Goel that at another level they are analogous--both Stevelim and Lovelace are directed towards the management of operating system boot. Mr. Goel agrees that on that level, they are analogous, but believed that might be too broad an interpretation of the art to apply to the present invention. We also discussed the claim language themselves and in response to Mr. Goel's question as to whether the examiner understood the invention or not, the examiner stated that he did and explained to Mr. Goel why the claim language read on more than what Mr. Goel was arguing they stated. We went through the limitations of claim 1 as an example and the examiner explained how what was being recited read on the management of multiple operating system boot. The examiner noted that many of the limitations Mr. Goel was arguing was not recited in the claims at all. Mr. Goel asked the examiner if he would be willing to reopen prosecution if they amended the claims to more clearly define the invention. The examiner stated that they have the right to send in amendments and if the amendments overcame Stevelim and Lovelace, then he would withdraw the rejections based on Stevelim and Lovelace, however, depending on how much it changed the scope of the claims, the examiner told Mr. Goel that the amendments would probably have to be submitted with an RCE because the examiner was not experienced enough to just be able to say whether the case was allowable without further search and/or consideration. Mr. Goel indicated that he would have to discuss with his boss whether they want to submit amendments or file an appeal. We discussed the motivation to combine the references and the examiner explained how since the motivation came from Lovelace, it was not hindsight as Mr. Goel was arguing, despite the motivation being different than what the inventors of the present application had. Finally, we discussed the last point sent in by Mr. Goel about the ordinal numbering was not arbitrary. Mr. Goel stated that because the claim stated that something was the first and the second, it was the first and the second and the examiner's assertion that such ordinal numbering was arbitrary was incorrect. The examiner disagreed because there was nothing in the specification which indicated why it was important, for example, that the first program is replaced with the second program--why not the third? The examiner used an analogy of a method of pizza delivery wherein there were multiple cars and a red car was used to deliver pizza to the north side of town and the dependent claim stated, wherein the red car delivered pepperoni pizza. The examiner stated that if there was a reference that showed pepperoni pizza being delivered via cars, but did not mention a red car, it was arbitrary (absent any evidence of secondary consideration) that it was the red car that delivered pizza to the north side of town. Another car could have done so without changing the spirit of the invention. Mr. Goel did not think it was a good example because a red car was not mentioned, rather it was "a first car".

44458-P017US

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## Minutes of phone call to USPTO Examiner

Client Matter No.:	44458-P017US	Date:	Sept. 01, 2005
Attorney/Agent:	GGOEL, #1535	Time:	10:00 a.m.CST
Examiner:	Ponnoreay Pich	Examiner Tel.:	571-272-7962
Supervisor:	Kim Vu	Supervisor Tel.:	571-272-3859

Questions / Topics regarding Office Action from 08/23/2005 (FINAL)	Examiner's Response / Comments
112 issues are a result of reformatting before filing, the filed version has been attained from PAIR. Claims were not affected. 112 rejections are acknowledged and will be addressed.	Examiner acknowledged.
<u>(p.7) Stevelim and Lovelace are not analogous art</u> Contrary to the Examiner's assertion, Lovelace does not mention the "boot of multiple operating systems". Lovelace teaches <u>one single operating system</u> with multiple boot components, whose integrity is verified prior to boot. Abstract; col. 1, l. 50-60; col. 2, l. 4-7; claims 1, 6.  Why is Lovelace analogous art if it does not mention "managing the boot of multiple operating systems" ?	Examiner requested topics in advance to prepare, sent to fax nr. 571-273-7962.  A subsequent phone conference was scheduled for Wed., Sep. 7, 2005, 9:30 a.m. EST
<u>(p.7) "Piecemeal" analysis not used to show nonobviousness</u> Contrary to the Examiner's assertion, Applicants did not argue a piecemeal case against the combination to show nonobviousness.  Applicants argued against the motivation to combine the references. In fact, the case law cited by the Examiner <u>strongly supports</u> Applicants assertion that no sufficient motivation to combine references has been presented, based on the standard that was used in those cases. <i>In re Keller</i> , 208 USPQ 871; <i>In re Merck</i> , 231 USPQ 375	
<u>(p.8) Cited motivation to combine is clearly hindsight</u> Contrary to the Examiner's assertion, Stevelim and Lovelace are not analogous art. An infection by viruses is a problem only for Lovelace, and is unrelated to the Application. Lovelace never mentions multiple operating systems, and teaches of denying boot in first case of corruption, without teaching an alternative thereto. Neither Stevelim nor the Application ever mention viruses or infection therefrom or repairs thereof. Where does the motivation stem to modify Lovelace along the lines of the present invention, absent hindsight of the Application?	

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Questions/ Topics regarding Office Action from 08/23/2005 (FINAL)	Examiner's Response Comments
<p><u>(p.9) ordinal numbering is not arbitrary in claims 1-54.</u></p> <p>The present invention teaches assigning first, second, and third versions of a bootable program to first, second, and third entries. The ordinal numbering of the entries in claims 1-54 is clearly not arbitrary once the assignment has been made. The examiner has not addressed the claim language, which clearly refers to ordinal numbering of versions and entries, in the rejection.</p> <p>What is the Examiner's explanation for asserting that ordinal numbering of versions and entries be interpreted as arbitrary?</p>	